

# Fair Political Practices Commission

## Memorandum

**To:** Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

**From:** John W. Wallace, Assistant General Counsel  
Luisa Menchaca, General Counsel

**Subject:** June 2004 Work Plan Revisions

**Date:** May 28, 2004

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### A. INTRODUCTION

Each year the Commission approves a regulatory work plan for the next calendar year.<sup>1</sup> The plan provides for quarterly work plan revisions. Attached is the June update to the regulatory work plan for calendar year 2004 reflecting changes during the second quarter.

### B. PROPOSED REVISIONS

#### I. Proposition 34 Retrospective – Proposed Regulatory Refinements.

- **Item 4. Recall Elections:**

**Issue:** Should candidates running in a state election be able to control ballot measure committees without limit?

Regulation 18531.5 provides that a state candidate controlling a recall committee is not subject to contribution limits. This raised many questions during the recent state recall election. One principal issue is whether this rationale applies to candidates who control ballot measure committees generally. The staff would explore this in light of constitutional implications and may recommend amendment of regulation 18531.5 or a new regulation addressing this and related issues.

**CHANGE:** As amended, the calendar reflects that the Commission may either hold a pre-notice hearing or adoption hearing in June.

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<sup>1</sup> See staff memorandum dated December 1, 2003, *Approval of 2004 Regulatory Priorities*.

## II. Other Campaign Projects

NO CHANGE

## III. Conflict Of Interest, Lobbying and Other

- **Item 1: General Plan Cluster.** Some agencies are viewing general plan amendments as coming within the purview of “zoning or rezoning” decisions under subdivisions (a)(1) and (a)(6) of regulation 18704.2. Because general plans cover the entire jurisdiction, officials of these agencies believe they cannot participate in such decisions unless the “public generally” or “legally required participation” exceptions apply. This results in substantial difficulties, in that all of the members of a governing board of an agency may be unable to participate in some of the most fundamental decisions affecting the entire jurisdiction. This project now includes the following subprojects:
- **Subproject (a), Public Generally:** Staff will explore modification of the general rule and the development of a stand-alone regulation pertaining solely to General Plan decisions.

**CHANGE:** Other than minor technical changes to regulation 18707.1 which were adopted in May, the Commission rejected further amendments in this project.

- **Subproject (b), Direct/ Indirect Effects:** Staff will examine how general plan issues can be addressed at Step Four (Assessment of Direct/Indirect Involvement) and Step Five (Identification of the Materiality Standard) of the conflict-of-interest analysis.

**CHANGE:** This item, originally scheduled for an adoption hearing in May, was instead considered in May as a second pre-notice hearing. Adoption is set for August.

- **Subproject (c), Foreseeability:** Consideration of clarification of the “reasonably foreseeable” standard to deal with problems associated with general plan decisions.

**CHANGE:** The Commission rejected amendments in this project in March.

- **Item 8. Possible Amendment to Regulation 18901.**

**Issue:** Staff is proposing holding an interested persons meeting for the middle of the year to discuss possible amendment to regulation 18901 as requested by Senator Ross Johnson. This item would not be added to the regulatory calendar pending input from the interested persons meeting.

**CHANGE:** This item was inadvertently left off of the March regulation calendar update.

## IV. Administrative, Enforcement, And Other Issues

NO CHANGE

## V. Other Miscellaneous Items

### NO CHANGE

### C. PROPOSED DEFERRALS

Due to changes in staffing and resource limitations, staff is recommending that the following four items be removed from the 2004 calendar and reconsidered as projects in 2005. They are:

- **Section I, Item 6. Regulation 18428: Affiliated Entities:** Discusses reporting by “affiliated entities.” May be further amended to clarify application of the aggregation provisions to local candidates and committees, add a definition of “affiliated entities” or codify other advice in the area.
- **Section II, Item 2. Treasurer Duty: All Reasonable Diligence in the Filing of Statements:** Regulation 18427, subdivision (a) provides that a committee treasurer has a duty to use all reasonable diligence in the preparation of campaign statements. However, the regulation lacks any corresponding duty concerning the filing of campaign statements. This creates a perceived ambiguity in the law regarding what a treasurer’s liability may be when the treasurer’s committee fails to file campaign statements as provided by law. Enforcement staff proposes that Regulation 18427, subdivision (a) be amended to add the words “and filing” after the word “preparation” in that subdivision.
- **Section II, Item 3. Aggregation under section 84308:** Section 84308 disqualifies any “officer” of a public agency, who is running or has run for elective office, from participating in decisions affecting his or her campaign contributors. The statute provides that when a closed corporation is a party (or participant), the majority shareholder of the corporation is also a party (or participant). This project considers whether further clarification of this aggregation rule is necessary.
- **Section III, Item 5. Sections 87202 and 87204:** Assuming and Leaving Office Statements. Staff is recommending that the Commission adopt a regulation clarifying when an official has assumed or left office triggering the filing of statements of economic interest. Currently, Commission advice for statements of economic interests may be different than the interpretation used in the revolving door context. Staff is also asking the Commission to consider a regulation clarifying filing requirements for alternates and designees.

## ATTACHMENT`